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VIRGINIA LAW REGISTER.

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MISCELLANEOUS NOTES.

MARTIN V. SOUTH SALEM LAND COMPANY.—The opinion in this case, published in full ante p. 743, is one of the most important and valuable yet delivered by our present Court of Appeals. Many of the questions therein settled have long vexed the bar and courts of the State, and the profession is not less to be congratulated that they are finally set at rest, than is Judge Buchanan for his very able opinion.

ENGLISH PLEADING.—Code pleading seems not to have the unqualified endorsement of the English courts. In the case of *Clydesdale Bank v. Paton* (1896) App. Cas. 381, an abstract of which appears in the *Canada Law Journal* for January, 1897, Lord Chancellor Halsbury expresses the regret which he feels at the decadence of the science of pleading under the modern English practice. He says: "By the precision of Scotch pleading, there is still a necessity to set out the real cause of action which is capable of definite and precise statement, which I regret to say is no longer the case in English pleadings."

THE AMERICAN BAR ASSOCIATION.—It is announced that the next meeting of the American Bar Association will be held at Cleveland, Ohio, August 25, 26, and 27, 1897. As stated in the REGISTER for July, 1896, this Association leaves Saratoga, its birthplace, every other year. It seems when it goes abroad to prefer the region of the Great Lakes, having met at Chicago in 1889, at Milwaukee in 1893, at Detroit in 1895; and now Cleveland is chosen for 1897—Boston, in 1891, being the exception which proves the rule. We hope to see the Association come South—and to Richmond—but we shall now have to wait until the summer of 1899, as it will return to Saratoga, under the rule, in 1898.

INJUNCTIONS FOR PUBLIC PURPOSES.—A matter of great popular interest at the present time, the extent of the power of the courts to issue injunctions at the suit of the government, to restrain public nuisances, is well discussed by the Texas court, in the recent case of *State v. Patterson*, 37 S. W. 478. In this case the State brought a bill for an injunction against the keeper of a common gambling-house.

The court refused to grant the injunction, on the ground that the case was a purely criminal one, in which it did not appear that any irreparable injury to property or civil rights was threatened. In this conclusion the court was doubtless right. The opinion of Mr. Justice Neill is of great value, however, as showing the true extent of the power to issue injunctions in such cases. It is there strongly asserted, in contradiction to a notion now generally current, that the mere fact that the acts enjoined would constitute, if committed, a criminal offence, is no reason why courts of equity should not interfere to prevent their occurrence. And it is also distinctly recognized throughout the opinion that the irreparable injury which the court will interfere to prevent need not be an injury to tangible property, but may be an injury to the civil rights of a private person or of the public. In taking this broad view of the proper use of injunctions, the Supreme Court of Texas approves the unanimous opinion of the Supreme Court of the United States in the important case of *In Re Debs*, 158 U. S. 564. That these cases are now established law is shown by the very fact that a bill has been proposed in Congress to cut down by statute the power of the Federal courts to enforce such injunctions.—*Harvard Law Review.*

NEXT MEETING OF THE VIRGINIA STATE BAR ASSOCIATION.—The Executive Committee of the Virginia State Bar Association have selected the Hot Springs of Virginia as the place of the next annual meeting of the Association, beginning August 3. This change from the White Sulphur will be, no doubt, a disappointment to some of the members, but it is thus explained by the Executive Committee in a circular letter: "The accommodations [of the Hot Springs], including lodgings and table, are elegant and ample, having been greatly enlarged in the last twelve months. There is a hall (The Casino) suitable in every respect for our assemblies, and the banquet is to be served in the regular dining-room at an early hour. We do not wish to descant upon the attractions of this place in comparison with any others. We are satisfied that the Association never had a more delightful place of meeting held out to it. We address this letter to each member of the Association because the management of the White Sulphur Springs, W. Va., at which place our meetings in the mountains have been heretofore held, earnestly desire the Association to return there this year, and with that end in view have sought from our members an expression of preference for the White. We had these letters and circulars in favor of the White before us to-day, but our deliberate judgment is in favor of the Hot Springs. We do not cast any reflection upon the White. The present management of that place is highly spoken of. We wish it to remain on our list, as competition between these resorts will afford the committee opportunities to make better terms for the accommodation of our Association. The Hot Springs is in Virginia; it is as accessible to travel as the White Sulphur; we are to get the same hotel and railway rates for our members, members of our families, and for our *bona fide* guests. We have assurances of reasonable terms in their bar, their livery and their baths—the rates of the latter to be one-half for the benefit of our meeting. We cannot, in the compass of this letter, go further into details; we only wish to say that, acting in the interest of the members of the Association and within the letter of authority conferred upon this committee, we have decided agreeably to the dictates of our best

judgment. We feel satisfied that our next meeting will be a great success, and that the members when they attend will approve our selection."

BUILDING CONTRACTS—RIGHTS OF SURETY IN RESERVED PER CENTUM.—The case of *Prairie State Nat. Bank v. United States*, 17 Sup. Ct. 142, affords an excellent illustration of an elementary principle of equity jurisprudence—so elementary that one cannot but marvel that a case involving but the single point should have been taken by appeal to the highest court of the nation. The case was simply this: A contractor had undertaken to erect a government building for a fixed sum, and had executed a bond, with surety, for the faithful performance of his contract. By the terms of the contract the government reserved the right to withhold ten per cent. of the contract price until completion of the work. During the progress of the work, the contractor assigned the ten per cent. reserve to a bank, to secure advances made and to be made for the purpose of the construction. Before completion of the building, the contractor failed, and, by his consent, the work was finished by the surety, who expended for that purpose more than the amount of the reserve, over and above current payments by the government. In a contest between the surety, claiming the reserve fund by subrogation, and the bank, claiming it by previous assignment, it was held that the surety was entitled to be subrogated to all the rights and remedies of the government, and therefore to receive the fund. In reply to the argument that, as the advancements made by the bank went into the work and so inured to the benefit of the surety, the latter should be postponed to the former, the court said, quoting from *Calvert v. Dock Co.*, 2 Keen, 638:

"The argument, however, that the advances beyond the stipulations of the contract were calculated to be beneficial to the sureties, can be of no avail. In almost every case where the surety has been released, either in consequence of time being given to the principal debtor, or of a compromise being made with him, it has been contended that what was done was beneficial to the surety—and the answer has always been that the surety himself is the proper judge of that—and that no arrangement different from that contained in his contract is to be forced upon him; and, bearing in mind that the surety, if he pays the debt, ought to have the benefit of all the securities possessed by the creditor, the question always is whether what has been done lessens that security."

This principle would lead to the result that if the owner of the building should himself pay directly to the contractor a part or all of the reserve, without consent of the surety, before completion of the building, the surety would be discharged to the extent of the value of the security surrendered; the rule being that a release of securities does not, like a change in the terms of the contract, extension of time, etc., release the surety absolutely, but *pro tanto* only. 1 Story's Eq. Jurisp. 326; 3 Pomeroy's Eq. Jurisp. 1419; note to *Trapnall v. Richerson* (Ark.), 58 Am. Dec. 338, 357; note to *Pain v. Packard*, 2 Am. L. C. 258–263; *Humphrey v. Hitt*, 6 Gratt. 509, 526; *Walker v. Commonwealth*, 18 Gratt. 13, 44; *Chichester v. Mason*, 7 Leigh, 244, 256; *Shannon v. McMullin*, 25 Gratt. 211.

BILL OF EXCHANGE—FRAUDULENT ALTERATION—NEGLIGENCE.—*Scholfield v. Londesborough*, (1896) A. C. 514, has at last reached its conclusion, and the House of Lords has affirmed the decisions of the courts below (1894), 2 Q. B.

660, and (1895) 1 Q. B. 536. The facts were simple: A bill of exchange for £500 was presented to the defendant for acceptance, having on it stamps sufficient for £4,000, and there were also blank spaces in it which admitted of its being altered. The defendant *bona fide* accepted the bill, and it was subsequently fraudulently raised to £3,500—and got into the hands of the plaintiff, a *bona fide* holder for value. The question was whether the defendant was liable for the amount of the bill as altered, and all the judges before whom the action has come, except Lopes, L. J., have decided that he was not. In arriving at this conclusion the House of Lords (Lords Halsbury, L. C., Watson, Macnaghten, Morris, Shand and Davey) take occasion to disapprove of the doctrine which owes its origin to *Young v. Grote*, 4 Bing. 253, to the effect that an instrument which has been fraudulently altered, may become valid in its altered state as against a party to it, merely by reason of his want of care, or his negligence, having indirectly facilitated the fraud. Their lordships do not expressly dissent from *Young v. Grote*, which was a case between banker and customer, in which the former claimed the right to debit the customer with the amount of a cheque which the latter had left with his wife, signed in blank, with authority for her to fill it up, and which, after it had been filled up for £50 by the wife, was subsequently fraudulently raised to £350, by a third person into whose hands it came—the fraud having been facilitated by the negligent leaving a blank space in the cheque. Still their lordships were generally agreed that that decision could only be supported on the ground that a customer owes a duty to his banker so to fill up his cheques as not to facilitate any subsequent fraudulent alteration being made therein, and that when he violates that duty, the banker may require him to reimburse any sums which he (the banker) has been misled into paying, through the fault of his customer; but they held that at all events that doctrine had no application as between the acceptor of a bill of exchange in which the amount is not left blank—after it is accepted, and any subsequent holder: and that an acceptor owes no duty to any subsequent holder of the bill, such as a customer owes to his banker. From this it would appear that no amount of negligence on the part of an acceptor of a bill of exchange for a stated amount, can involve him in any liability for any subsequent alteration of the bill. This at first sight seems hard on holders for value without notice, but the difficulty in establishing that an alteration has been made after acceptance will always, in the ordinary course of affairs, be a sufficient inducement to acceptors not to facilitate such alterations by any negligence on their part.—*Canada Law Journal.*

This subject is discussed at some length in our note to *Lynchburg Nat. Bank v. Scott*, 1 Va. Law Reg. 357, 366, where the case of *Schofield v. Londesborough*, above referred to, is cited. In addition to the authorities previously cited, see *Burrows v. Klunk*, 70 Md. 451 (14 Am. St. Rep. 371.) In the case last cited the defendant had indorsed a negotiable note for fifty dollars, so written that there was space enough left before the word "fifty" for the insertion by the payee of the words "five hundred and," which the payee fraudulently inserted. The note was afterwards transferred to the plaintiff, who was a *bona fide* holder, for value. It was held that the indorser was not liable, the court saying that while he may have been careless, "it was not his carelessness, but the crime committed by another, that was the proximate cause that misled the plaintiff." The opinion contains an exhaustive review of the authorities.

IN AN ENGLISH COURT OF LAW.—We take the following account of an English court of law, "By an American Woman," from the *Green Bag* for January, 1897, where it is credited to "Ex."

"It is a distinct experience, the first time you go to an English court of law. In the first place, you have the feeling that you should have prepared for the visit by going to a costumer's and hiring a fancy dress—something not too dazzling, but unique, and as far as possible from what you ordinarily wear. This seems to be the principle on which every one—that is, every man—who has anything to do with the court is dressed, with the result that you see them arrayed in a choice assortment of black silk tea-gowns and black alpaca Mother Hubbards. They do not call them that, but in the dressmaking department of your intellect you know that is what they really are, and resolve to borrow one for a pattern.

"Not content with tea-gowns only, the court shows a distinctly feminine inclination in its style of hair-dressing. They are frankly and obviously wigs that you see—wigs dressed after a most ladylike fashion, with nice little side puffs, such as our grandmothers used to put combs in to keep in place. The "back hair," too, is a distinct feature. What with their tea-gowns and their hair, and their smooth faces, and their brilliant and enduring capacity for talk, an assemblage of English lawyers is, at first view, not unlike a session of a woman's club, or a Dorcas society that has forgotten to bring its work along.

"It occurs to you what an unintentional, and therefore sincere, compliment is paid to us women when law, the most intellectual of the professions, chooses as its established and authorized costume one that comes nearer to a woman's dress than any other that men wear. It has the outward appearance, at least, of an acknowledgment that they do their best thinking when they make themselves as much like us as they can.

"It is almost time for court to open, but you are not to suppose that it begins without any ado, as is the case at home. In an American court the judge walks in clad in ordinary clothes, hangs up his hat, sits down, mostly on his shoulder-blades, the lawyers present stop smoking for a moment and crowd inside the rail to catch his Honor's eye, and the successful one, one hand in his pocket and the other ready to pound the table with, proceeds to instruct the judge as to what is and is not law, and the lawyer on the other side as to what is and is not admissible evidence.

"All of which is not the English mode. Etiquette, if not law, directs in which particular little pew the barrister for each side must sit, backed up by his solicitors, and these parties of the first and second parts arrive with leather valises of a set and established pattern which, under certain circumstances, they may carry themselves; under certain other circumstances they must have carried for them. Sub-officials of the court lay cold sliced law, in the shape of documents and books, ready to hand. Solicitors, who are a brand of lawyers that know law but don't practise it, apparently because they haven't any tea-gowns yet, make haste to tell their counsel—who are lawyers that practise law but don't know it until they are told it—what has been found out about this particular case since the last conference. Clerks—you must pronounce it with a broad "a," or people will think you are so ignorant that you don't know how to spell it—well, clerks come in with bags, called green bags, for the reason that they are invariably either blue or red. They look so like laundry bags that you send soiled linen in to the wash

that when you find that this is a divorce court, and that these bags contain the documents relating to the cases, you at once realize both the origin and the force of the saying about washing dirty linen in public.

"Someone—a *blasé*-looking man in a dress like a stunted polonaise—says something unintelligible to the audience, but they evidently know what he intends to say, and every one immediately gets up; all but you, who are so busy with your eyes that you forget your feet. Someone nudges you, and you rise, thereby not only showing respect to the representative of the Queen—if you did not you could be fined—but getting a very good view of the personages of the small but imposing procession emerging from the curtains behind the judge's chair. Enter, first, a sort of human preface in the shape of a mace-bearer. Generally speaking, judges even in England the Elaborate do not have mace-bearers, but this particular one has set up one pretty much as another man would set up a coach or a new doctrine in religion—by way of being a swell and different from his fellows. And the mace, too, is different from its fellows; others that you have seen are like bludgeons, this one is shaped like a stunted oar.

"And now enter the judge, evidently a picturesque-minded person, for his tea-gown is red, with a sash around the place where his waist would be if he had one. His sleeves are turned back with grey, and you imagine that it is to keep them clean, but it is not. In law, the obvious reason is never the actual reason. Those grey sleeve-protectors are mourning; they were put on when somebody royal died—George the Third, as likely as not—and as the powers that be have not said that they were to be taken off, the judge keeps on being sorry, from his elbows down.

"His lordship comes in; every one bows profoundly, and he returns it by a complicated movement made up of one part bow, one part a sidling walk, for he is ushering in, not the Prince of Wales, nor Li Hung Chang, as you might expect from his manner, but American Law in the person of Morton of the Supreme Court of Massachusetts. Your pride rises within you, for it is written all over Morton's face and figure and clothes that he is an American and a gentleman and a scholar. You wish that they would find many more just like him, and induce them all to come over here as an offset to the common or garden American, that is as a plague of thistles at about this time of year.

"There he sits on the bench beside the judge, guiltless of slouch, his clothes well brushed, his mouth well shut, showing more intelligence by the way he listens than most people do by the way they talk. So marked is his personality and also the distinction which is being accorded him by his lordship, that every one asks who he is, and it delights your very soul to know that this credit to his country and himself is an American.

"Meantime the case has begun, and a mixed affair it is. An American barrister, representing an official in China, is petitioning an English judge for a divorce in which an East Indian is involved, with the result that besides the law of divorce there enter questions of geography, domicile, jurisdiction, free ports of entry, and sundry minor entangling considerations.

"As soon as you find it is a divorce case you retire, not having provided yourself with a mental disinfectant. Candidly you do so reluctantly, for he of the red gown is the famous Sir Francis Jeune, and the American barrister is Newton Crane, who had his first case at the English bar before this same Sir Francis.

You would like to see how the two nationalities hit it off together; but friendship *plus* patriotism, even of the Star-Spangled Banner sort, is inadequate to carry you through the hearing of a divorce case in an English court. So you go to the next room and there learn some disconnected but interesting facts. One is that the judge is wearing a red gown because it is the eve of St. Somebody's Day; not the anniversary itself, but its eve.

"Then you watch them try an Admiralty case. With sweet inconsequence they group together those three unrelated classes of cases, admiralty, probate, and divorce. You discover that under the disguise of Law some more tea-gowns, aided by two gentlemen in uniform (that is where the Admiralty part comes in), are conducting a middle-aged kindergarten, toys and all.

"Before the judge's bench is a counter with the points of the compass marked on it, and they pretend that this is the sea or river they are talking about. Then there is a box full of toy boats ready, and as the barrister presents his case he puts up one little boat to represent the vessel that was run into, then dives down and gets another and sets it up to represent the one that ran into it. Everything is made beautifully clear until the opposing counsel produces eight more boats, to represent vessels anchored in the vicinity. Then the gentlemen in uniform and the judge ask a confusing lot of questions, and then a plain, everyday sailor man with an impossible accent comes forward as a witness, and turns all the boats around, adds five more to the fleet, and talks about "nor'-nor'-east by north." Just as you begin to think it is a slow kind of game after all, word is brought you that Sir Francis Jeune has decided the divorce case; that the American barrister has won, of course; that, as nearly as you can find out, everybody is divorced from everybody else, and that they all lived happily ever after."

Questions Propounded by the Court of Appeals to Applicants for License to Practice Law, January 8, 1897.

Real Estate.

1. Define the word "land."
2. What is an estate, and what are the primary divisions? Define each.
3. Define dower. What are its requisites?
4. Of what is a widow dowable? How as to partnership real estate, and equitable estates?
5. A devised his lands to his son B, and if B should die without having lawful issue of his body, the lands would be divided among the testator's daughters. B died, leaving a widow, but without having had lawful issue of his body. What kind of estate did B have, and was his widow entitled to dower?
6. What is an estate by the curtesy. Name its requisites. In what respect do they differ from the requisites for dower.
7. State law as to curtesy in both equitable and legal separate estates.
8. How may dower be barred?
9. Define jointure.
10. What are the actions for the recovery of real estate, and when may each be brought?
11. What is a remainder? Give an example. Also, define what is an executory devise, and give an example.

12. A man dies owning a tract of land and leaving several heirs at law. If you were employed by one of them to get his share, what would be the proper proceeding, giving the various steps.

Contracts.

1. Define a contract; also a consideration.

2. Into what classes are contracts usually divided? Which of them need a consideration to support it?

3. How are simple contracts divided? Give an example of an express contract, and also of an implied contract.

4. May contracts be verbal as well as in writing?

5. Which, if any, are required to be in writing? If not in writing, what is the result?

6. If in writing, is parol evidence admissible to explain the intention of the parties; and if so, to what extent?

7. State the doctrine as to A's liability where he says to B (1), Let Smith have $100 and I will pay it; (2), Let Smith have $100 and I will see you paid; (3), You may look to me for payment of the $100 which you lent to Smith last week.

8. What is the difference between a void and a voidable contract?

9. In what case, if any, can a minor be held liable for goods purchased?

10. On the 1st of January A makes a verbal agreement to rent certain premises to B for one year from the 1st of February following. Is the agreement valid? Give reasons for answer.

11. What is a common carrier?

12. Suppose A employs B at a salary for one year, but afterwards refuses to take him into his employment, what are B's rights? Can he sue at once, or must he wait until the end of the year, and what are B's duties as to seeking other employment during the year?

Negotiable Paper.

1. What is negotiable paper?

2. What is a bill of exchange? Give its requisites.

3. Draw a bill of exchange, a foreign bill and also an inland bill; also a negotiable note in Virginia.

4. What is the difference, both in form and effect, between a blank endorsement and a full endorsement?

5. Under what circumstances, if any, may the maker of a negotiable note successfully resist its payment in the hands of a *bona fide* holder for value received in due course of business?

6. What is the protest of negotiable paper and the effect of it?

7. What is the doctrine as to defences to negotiable paper by the maker against the holder who acquires it after maturity?

8. Suppose that A is the endorser and B the maker of a negotiable note held by a bank. After default made and due notice given, the bank, at the maker's request, consents to give him sixty days' further time, how does this agreement affect the rights of the endorser?

9. What is a bond? Also a promissory note?

10. State some of the leading differences between bonds and promissory notes on the one side and negotiable instruments on the other.

Sales.

1. What constitutes a sale of personal property?

2. When does title pass?

3. A sells to B one hundred barrels of flour lying in a warehouse in the city of Norfolk. The barrels have on them the brands of several different mills; the price is agreed on; the vendee gives a check on the bank for the agreed price for the whole quantity; the vendor at the same time gives to the vendee a list specifying the number of barrels of each brand and an order on the warehouseman for the flour, and a receipt in full for the price of the flour. The warehouse and all its contents, including the flour and the check, being burned before the actual delivery of the flour, whose is the loss? May the vendor recover the price? State the reasons for your answer.

4. Can the title to personal property, after its sale and delivery to the vendee, be retained by the vendor until the purchase money is paid? If so, how?

Partnership.

1. Define partnership.

2. How may a partnership be formed and how dissolved?

3. Upon the dissolution of the parnership, what is the interest of each partner in the partnership property, and how ascertained?

4. If an individual creditor of one of the partners recovers a judgment against him and levies his execution on the partnership effects, what is the creditor entitled to under the lien of his execution against the individual partner?

Torts.

1. What is a tort?

2. Name three different kinds of torts?

3. What degree of care or diligence does the law require of a person just before crossing a railway track?

4. Define "Libel" and "Slander."

5. A, B, and C jointly commit a trespass on the property of D. A goes to D and pays him $100 to cover his share of the damage done, and D releases him from further liability. What effect, if any, does the settlement with A have on D's claim against B and C?

6. Suppose A does B a personal injury for which he is liable to a criminal prosecution, and is prosecuted, is B's right of action for personal injury affected by the prosecution?

7. If B dies from the injury, does his right of action survive to his personal representative? Give reasons for your answer. Or may his personal representative bring any action for the injury?

8. Suppose the injury is done by A to the estate and not to the person of B, and B dies, does his right of action survive to his personal representative?

Pleading.

1. What is pleading and what are its objects?

2. Give the names of the different personal actions and the legal term for the plea which forms the general issue in each of the actions.

3. When does a pleading conclude with a verification and when to the country?

4. What is the difference between a plea in abatement and a plea in bar, and when is a plea to the jurisdiction required to be filed?

5. What are the proceedings on a demurrer to the evidence?

6. What is the purpose of introducing more than one count into a declaration? Name the usual common counts.

7. On whom is the burden of proof where the defence is the statute of limitations?

Equity.

1. State the difference between courts of law and courts of equity as to their procedure and the manner of administering justice.

2. Give three maxims of equity and explain their meaning.

3. Define a resulting trust and a constructive trust. Give an example of each.

4. A gave B a deed absolute on its face to a tract of land to secure the payment of a sum of money lent by B to A. B refuses to reconvey the property. Has A any remedy, and why, or why not?

5. Name some of the principal heads of equity jurisdiction.

6. A, as executor of B, settles his account annually before a commissioner of accounts and it is confirmed by the court in which he qualifies, what is the effect of the confirmation upon the account? If the account was erroneous, how may any party interested in it correct the error?

Criminal Law.

1. How are criminal offences divided?

2. What constitutes a felony and what a misdemeanor?

3. Name the different grades of homicide.

4. Define a reasonable doubt as applied to a criminal prosecution.

5. What is the *corpus delicti*?

6. What are dying declarations, and when admissible as evidence?

PLEDGE.—I hereby certify that I have neither received nor given aid or assistance in any manner during this examination.